

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Mat.Appeal.No. 113 of 2006()

MOP.62/2002 of PRINCIPAL SUB COURT, PALAKKAD
.....

PETITIONER: APPELLANT/PETITIONER IN M.O.P.

RAJESH, S/O.T.V.SREEDHARAN MENON,
AGED 39 YEARS, RESIDING AT SREELAGAM PUTHUR,
PALAKKAD.

BY ADV. SRI.K.C.ELDHO

RESPONDENTS: RESPONDENT IN M.O.P.

SHEELA, D/O.P.K.NARAYANANKUTTY NAIR,
AGD 31 YEARS, RESIDING AT ANUGRAHA,
P.O.VADASSERY, KERALASSERY, PALAKKAD.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD
ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

Mat.Appeal.NO. 113 OF 2006

Dated this the 11th day of September, 2007

JUDGMENT

Koshy, J.

The appellant in this case married the respondent on 26.2.2000 after completing the customary formalities. Parties were governed by Hindu law. It is the allegation of the appellant that after November, 2000, they never lived together. She was suspicious of him and she never gave him peace in his life and it is also stated that the appellant's life became miserable due to her act. Always she used to pick up quarrels and threaten to commit suicide. It is also contended that even if in MOP.108 of 2002 restitution of conjugal rights was ordered, that was never tried to execute. The application filed in 2002 was dismissed in 2006 simply on the ground that no evidence was adduced. After hearing the arguments of both sides, we have sent the parties for independent counseling. But the counsellor was not able to take the parties to come to a settlement. It is argued by the learned counsel for the appellant that the marriage was broken within six months. There was no children. It is impossible to live together and they are residing separately for six

years. It is submitted by learned counsel for the appellant that it can be gathered that in the above circumstances the marriage was irretrievably broken. He also placed reliance on the Apex Court decision in **Naveen Kohli v. Neelu Kohli** (AIR 2006 SC 1675). Learned counsel for the respondent submitted that allegations are not correct and if she is given a chance, she will not make any room for such complaints and she is prepared to make any amends to save the marriage and marriage is not irretrievably broken. After considering the aspects, we are of the opinion that impugned order is liable to be set aside as it was dismissed mainly because no evidence was adduced. We set aside the impugned order. Since the Sub Court, Palakkad which passed the impugned order has no jurisdiction, the matter should be considered de novo by the Family Court, Palakkad, after giving both parties an opportunity to adduce evidence. We are not making any observation regarding the merits of the matter.

The Registry is directed to send a copy of this judgment to the Family Court, Palakkad. The Family Court, Palakkad shall dispose of the matter in accordance with law as expeditiously as possible,

preferably within three months from the date of receipt of a copy of this judgment. The parties shall appear before the Family Court, Palakkad on 5.11.2007.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.